

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DYNAMIC SYSTEMS, INC.,

Plaintiff,

v.

SKANSKA USA BUILDING, INC.,

Defendant.

-----X
SKANSKA USA BUILDING, INC.,

Counterclaimant,

v.

DYNAMIC SYSTEMS, INC.,

Counter Defendant.

-----X
SKANSKA USA BUILDING, INC.,

Third-Party Plaintiff,

v.

WESTCHESTER COUNTY HEALTH CARE
CORPORATION,

Third-Party Defendant.

-----X
WESTCHESTER COUNTY HEALTH CARE
CORPORATION,

Third-Party Counter Claimant,

v.

SKANSKA USA BUILDING, INC.

Third-Party Counter Defendant.

-----X

**CIVIL ACTION NO.
7:19-cv-10237-NSR**

**NOTICE OF MOTION
TO DISMISS**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 7/11/2023 _____
--

WESTCHESTER COUNTY HEALTH CARE
CORPORATION,

Fourth-Party Plaintiff

v.

PERKINS EASTMAN ARCHITECTS, DPC,

Fourth-Party Defendant.

-----X

PERKINS EASTMAN ARCHITECTS, DPC,

Fifth-Party Plaintiff,

v.

JOHN SMOLEN & ASSOCIATES LLC, JOHN
SMOLEN, BARD, RAO & AHANAS
CONSULTING ENGINEERS P.C., a/k/a BR+A
ENGINEERS, and MAZZETTI, INC., a/k/a
MAZZETTI+GBA

Fifth-Party Defendants.

-----X

PLEASE TAKE NOTICE that, upon the Affirmation of Paul Novak, Esq. and the exhibits attached thereto, and the accompanying Memorandum of Law in support of Fifth-Party Defendant, BARD, RAO & ATHANAS CONSULTING ENGINEERS P.C., a/k/a BR+A ENGINEERS' ("BR+A") Motion to Dismiss, dated February 17, 2023 and all other pleadings and papers filed herein, BR+A will move this Court at the United States Courthouse, 300 Quarropas Street, White Plains, New York 10601, at such date and time as the Court may direct, for an Order pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7), dismissing Counts Seven, Nine and Ten of the Supplemental Fifth-Party Complaint of Fourth-Party Defendant / Fifth-Party Plaintiff PERKINS EASTMAN ARCHITECTS, DPC, together with such other and further relief as the Court deems just and proper.

Dated: New York, NY
February 16, 2023

BYRNE & O'NEILL, LLP
Attorneys for Fifth-Party Defendant,
BARD, RAO & ATHANAS
CONSULTING ENGINEERS P.C.,
a/k/a BR+A ENGINEERS

By:



Paul Novak, Esq.
Michael J. Byrne, Esq.
11 Broadway, Suite 910
New York, NY 10004
212-422-9424
pn@bonlaw.com
mjb@bonlaw.com

To: All Parties via ECF

On January 19, 2023, the Court granted Fifth-Party Defendant Bard, Rao & Athanas Consulting Engineers P.C.'s ("BR + A") request to file a motion to dismiss Fourth Party Defendant/Fifth Party Plaintiff Perkins Eastman Architects DPC's ("Perkins Eastman") Seventh, Ninth and Tenth causes of action against BR+A in its Fifth-Party Complaint, and set a briefing schedule whereby all motion papers were to be filed by the parties on the reply date, March 31, 2023.

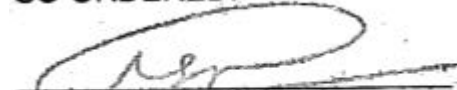
However, the only papers filed as of today are BR + A's: (1) Notice of Motion to Dismiss; (2) Memorandum in Support of its Motion to Dismiss; and (3) various affidavits in support of its Motion to Dismiss. These documents were filed on February 16, 2023, despite the Court's clear instructions that all motion papers were to be filed by the parties on the reply date, March 31, 2023.

The Court therefore denies BR + A's motion to dismiss without prejudice and with leave to renew and sets the following amended briefing schedule: (1) Fifth-Party Defendant's moving papers are to be served (not filed) on August 11, 2023; (2) Fifth-Party Plaintiff's opposition papers are to be served (not filed) on September 11, 2023; and (3) Fifth-Party Defendant's reply papers are to be served on September 25, 2023. All motion papers are to be filed by the parties on the reply date, September 25, 2023. The parties are directed to provide Chambers with two physical courtesy copies of their motion papers on the same date they are served on opposing counsel. The parties are further directed to provide the Court with an electronic courtesy copy of the motion papers as they are served per this Court's local emergency civil rules.

Additionally, to ensure all parties in this action are apprised of this briefing schedule, BR + A is directed to serve a copy of this endorsement on all parties in this action by certified mail and to file copies of service on the docket. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 221.

Dated: July 11, 2023
White Plains, NY

SO ORDERED:



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE